The legislation there was wider and more specific than that under the Emergency (Passports) Order 1983.

There is no law which prevents a passport holder from handing over his passport to another for that person to act as his agent to carry out some act which the person himself could legitimately perform or to retain it for and on behalf of the holder for whatever period the holder thinks fit.

The evidence shows that the passports in this case were voluntarily handed over to the appellant. His authority to retain those documents was never revoked. He assumed the responsibilities as custodian of the documents for and on behalf of the passport holders. His initial acquisition of the passports was not unlawful. Merely continuing to hold them did not evidence any possession by him for an unlawful purpose.

For these reasons, this Court is of the opinion that the conviction in this case was wrongly entered and the appeal must be allowed. Accordingly, it quashes the conviction and directs that the fine, if paid, is to be returned to the appellant.

Appeal allowed.

Solicitors: *David Clidero & Co.*

LITA MADDOX v. CALITO C. GUINTO & ANOR.

[A.C.J. (Hooper J.) June 14, 1986]

[Bandar Seri Begawan – Civil Suit No. 245 of 1985]

Damages – Fatal accident – Lost years – Free balance – Deduction of personal expenses – Lacking information – Quantum of damages – Law Reform (Miscellaneous Provisions) Act, 1934 – Application of Laws Act (Cap. 2).

The plaintiff is the sister and administratrix of the estate of the deceased, a 27-year-old electrician who died on September 6, 1982, when he was a passenger in a motorcar driven by the 1st defendant as servant or agent of the 2nd defendant. She filed this action on July 25, 1983, for the benefit of the estate. Loss of expectation of life and funeral expenses had been agreed. The sole issue for determination is what is recoverable in respect of the lost years having regard to the assessment of the free balance. The total annual gross earnings of the deceased at the time of his death were about $15,420. Had he been alive at the time of trial, his gross annual earnings would be $20,250. The learned trial judge took the median figure of $17,835 as the multiplicand for the pre-trial earnings. As to post-trial earnings, the deceased would be expected to earn some $3,000 per month as an electrical supervisor; total gross annual earnings would be $41,640. The judge considered appropriate a multiplier of 16. The plaintiff forbade enquiries in respect of the money remitted by the deceased to the Philippines. There is thus very little evidence as to what the deceased's actual living expenses were.

Held: (1) the personal expenses of the deceased should be fixed at 75%;

(2) the pre-trial loss should be calculated at $17,835 x 3.75 x 25% = $16,720.31;

(3) the post-trial loss should be calculated at $41,640 x 12.25 x 25% = $127,522.50;

(4) judgment for the plaintiff in the total sum of $159,543 (rounded), with costs. Question of interest reserved for hearing.

Cases referred to:

(1) *Gammell* v. *Wilson* [1981] 1 All E.R. 578, 593.
(2) *The Personal Representatives of the Estate of Wong Sai-Chuen, deceased* v. *Tam Mei-Chuen & Ors.* [1983] H.K.L.R. 331 C.A.
(3) *Liew Choon Kin* v. *Ang Bee Tee* (unreported) – Brunei Court of Appeal Civil Appeal No. 1 of 1983.
(4) *Tiong Ing Chiong* v. *Giovanni Vinetti* [1984] 2 M.L.J. 169, 179.
(5) *Ang Bee Tee* v. *Liew Choon Kin* (unreported).
(6) *White* v. *London Transport Executive* [1982] 2 W.L.R. 791.
(7) *Adsett* v. *West* [1983] 2 All E.R. 985.
(8) *Harris* v. *Empress Motors* [1984] 1 W.L.R. 212.

CIVIL SUIT.

T.C. Chan for the plaintiff.

David Clidero for the defendants.

Joseph Linus, amicus curiae.

Cur. Adv. Vult.

Hooper J.: The plaintiff is the sister and administratrix of the estate of Jaime Tipton Galdones, deceased, and she brings this action for the benefit of the said estate. Letters of administration were granted to the plaintiff in the Court of the Probate Officer of Bandar Seri Begawan on June 12, 1984. The suit was commenced on July 25, 1985.

The cause of action arose on September 6, 1982, when the deceased was a passenger in a motorcar driven by the 1st defendant who was acting as the servant or agent of the 2nd defendant.

Interlocutory judgment has been entered against the 2nd defendant, and the matter comes before me to assess the quantum of damages, which should be

awarded to the estate under the Law Reform (Miscellaneous Provisions) Act, 1934. This is an act of general application and is, therefore, in force in the State of Brunei by virtue of section 2 of the Application of Laws Act Cap. 2 of the Laws of Brunei.

The parties are agreed that the estate is entitled to $6,000/= in respect of loss of expectation of life and $9,300/= in respect of funeral expenses.

No claim is made in respect of pain and suffering and the sole issue before me is what is recoverable in respect of the lost years. The damages recoverable under this head were described by Lord Scarman in *Gammell* v. *Wilson*[1] in the following words:

"The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at time of death would suggest he was reasonably likely to achieve."

In *The Personal Representatives of the Estate of Wong Sai-Chuen, deceased* v. *Tam Mei-Chuen & Ors.*[2], the Court of Appeal of Hong Kong (Roberts C.J., Yang and Barker JJ.A.; on May 12, 1982) considered the correct approach of a judge in the face of *Gammell* v. *Wilson* in assessing the free balance. They considered this to be that:

(a) he assesses the net income (that is, the income after tax) which the deceased would have been expected to receive during his lost years;

(b) he deducts from this figure only "the cost of maintaining himself" (otherwise described as 'personal expenses');

(c) these personal expenses will include the cost of housing, food, clothing, travelling, insurance, a holiday, entertainment, social activities and perhaps a car;

(d) the 'personal expenses' should reflect the deceased's own pattern of expenditure when alive and the general standards of reasonable expectation of persons of his background, status and income;

(e) the contributions which the deceased would have made to his family do not form part of the cost of maintaining himself. Nor do his savings, if any.

The same considerations apply in Brunei as was clearly recognised by the Court of Appeal of Brunei in Civil Appeal No. 1 of 1983 *Liew Choon Kin* v. *Ang Bee Tee*[3] with the one exception that there is no income tax to be taken into consideration.

The first step must be to assess the income which the deceased would have been expected to receive during the lost years. This implies, first of all, calculating his annual earnings (the multiplicand) and secondly, selecting a multiplier to reflect the number of years that he would be expected to receive those earnings, making due allowance for the vicissitudes of life, the fact that wages and costs will rise and the fact that it is an advantage to the estate to receive a lump sum as opposed to having money coming in over a period of years.

It is convenient to consider one multiplicand in respect of two periods: pre-trial and post-trial.

PRE-TRIAL

So far as the deceased's pre-trial earnings are concerned, there is no dispute that he was earning $750/= per month salary and that he earned $65/= per month in overtime. That brings the annual figure to $9,780/=.

In addition to that, he received benefits which are not disputed:

$270/= per month in respect of housing
This works out at $3,240/= per annum

$200/= per month in respect of a car
This works out at $2,400/= per annum

Mr. Clidero argues that, although these benefits have a monetary value, they are not cash in the pocket. They must, nevertheless, in my view, be taken into consideration because a deduction also has to be made in respect of the living expenses of the deceased.

There was also evidence to the effect that the deceased received $2.50 per day in respect of food allowance while he was working at Seria. The evidence, however, was that this was of a temporary nature in that he would not have been working at Seria for much longer.

In view of the small amount involved and the short time that it would have been payable, I do not think that I should take the food allowance into the calculations.

There was also evidence to the effect that the deceased received free medical and dental treat-

ment but no attempt has been made to put a value on these. I do not propose, therefore, to take them into the calculations.

This brings the gross earnings of the deceased, at the time of his death, to roughly:

$ 9,780/=	salary plus overtime
$ 3,240/=	housing
$ 2,400/=	car
Total gross earnings $15,420/=	

There was evidence from Mr. Maddox, the Managing Director of the 2nd defendant, who was in fact the brother-in-law of the deceased and is the husband of the plaintiff, to the effect that if the deceased had still been alive today, he would have now been a skilled electrician earning $1,120/= per month plus increased overtime, though no figure was given as to what the increased overtime might be.

However, the increase in his earnings, reflected in percentage terms, works out at roughly 50%. If the same percentage is applied to his overtime, it would mean that it would be roughly $97.50 per month. That would mean that his monthly earnings would be roughly $1,120/- + $97.50 = $1,217.50. This would bring the annual figure to $14,610.00. To this annual figure should be added the benefits. There was no evidence as to what he might receive in benefits today, so I will take the same figures of $3,240/= for housing and $2,400/= in respect of car, making a gross total of –

$14,610.00	salary and overtime
3,240.00	housing
2,400.00	car
Total : $20,250.00	

If the deceased's gross annual earnings, at the time of his death, were $15,420/= and his gross annual earnings today would be $20,250.00, it seems to me that I should take the median figure as representing the multiplicand during this period from his death up to the date of this trial.

Thus I will take $17,835.00 as the multiplicand for the pre-trial earnings.

This will mean that his pre-trial earnings from the time of his death up to the trial will be –

$17,835.00 x 3.75 = $66,881.25

A POST-TRIAL

This is much simpler because Mr. Maddox testified that the deceased was capable of being an electrical supervisor by this time. He would expect the deceased to have been so today. This would mean that he would be earning not less than $3,000/= per month.

I have not been asked by Mr. Chan for the plaintiff to take this into account in respect of the pre-trial earnings, but I am asked to do so in assessing what the deceased's future earnings would have been in the post-trial period.

Mr. Clidero argues that an assumption that the deceased would have today been earning $3,000/= a month is highly conjectural. I do not think he can be right. Mr. Maddox's evidence was unchallenged on this point.

This would mean that the multiplicand in respect of the post-trial period should be –

$36,000.00	salary
$ 3,240,00	housing
$ 2,400.00	car
Total : $41,640.00	per annum

The Multiplier

The deceased was 27 years old at the time of his death but his 28th birthday would have been only 3 days later. I think for the purposes of calculation, I should thus consider him to be 28 years old. He was in good health. There was evidence that his retiring age would have been 55 years.

Mr. Chan has referred me to a passage in the judgment of Huggins J.A. in the Brunei Court of Appeal in *Tiong Ing Chiong* v. *Giovanni Vinetti*[4] where he said:

"In *Lee Woon Sun* v. *Wong Kin Keong*, I suggested as a general rule a discount of not more than 10% be appropriate for the contingencies of life."

Vinetti's case went to the Privy Council but the judges there did not comment on this quotation by Huggins J.A. when the appeal came before them, but considered that the multiplier of 13 applied in that case was on the low side with respect to the man of 27 despite the fact that he was engaged in the hazardous occupation of deep sea diving.

Mr. Chan has referred me to a number of cases involving awards in respect of deceased persons who were young men in their twenties at the time of their death.

It is, of course, a question of fact as to what should be the appropriate multiplier.

Mr. Chan urges me to discount 11 years leaving 17 years purchase arguing that the deceased's work, as an electrician, was not dangerous work.

Mr. Clidero concedes that the multiplier should be between 14 and 18, but argues in effect that not only was the deceased's occupation a risky one, but also that his prospects were not all that bright because of the depression in the oil industry and its effect on the position of workers in the company he worked for. He also stressed the government policy of replacing expatriate labour with bumiputra workers.

Nevertheless, I bear in mind that the deceased was working for a company in which his brother-in-law was the Managing Director, who has given evidence that there is no doubt that the deceased would have stayed with the company and that he expects himself to be here in Brunei in 20 years' time. He also testified that there were no risks involved in the work of an electrician because all the company's staff were trained with regard to the safeguards. Throughout all his years in Brunei, there has never been an occasion when one of his electricians was killed on the job.

It seems to me that one experiences greater risks driving down the streets in Brunei than the deceased would ever face on this sort of job.

I consider, on the evidence, that the deceased's prospects were good and that the risks involved were minimal.

Taking all things into consideration and making allowance for the vicissitudes of life, the fact that wages and costs will rise and the fact that it is an advantage to the estate to receive a lump sum as opposed to having money coming in over a period, I consider that a multiplier of 16 years is appropriate.

The pre-trial earnings have already been calculated on the basis that they would have accrued over 3.75 years. That leaves a balance of 12.25 years for the purpose of calculating what the deceased's earnings would have been during the post-trial period.

I therefore hold that the earnings during the post-trial period would have been:

$41,640/- x 12.25 = $510,090/-

Personal Expenses of the Deceased

The next step in the calculations is to deduct from each of the figures reflecting what the deceased's earnings would have been during the pre-trial and post-trial periods, the cost of maintaining the deceased at the standard of life appropriate to his case, in other words, his personal expenses.

It is here that there is a greater divergence between counsel. Mr. Chan contents himself with relying on the case of *Ang Bee Tee* v. *Liew Choon Kin*, in which I held in a case where the evidence was sparse, to say the least, that the deduction should be one third. He relies on the fact that that judgment was upheld in the Brunei Court of Appeal.

Mr. Clidero, on the other hand, queries this proportion and refers me to two decisions in the Queen's Bench Division of the High Court in England: *White* v. *London Transport Executive,*[6] *Adsett* v. *West*[7] and to a decision of the Court of Appeal in England in *Harris* v. *Empress Motors*[8] in which *White's* case was commented upon. I will come back to these.

First of all what are the facts?

The plaintiff herself gave evidence, which has not been contradicted, that the deceased came from a middle class family. He spent money on the necessaries such as clothings when they became necessary. He didn't drink alcohol except occasionally when it was offered. He didn't smoke. He didn't entertain a lot. He went to the cinema. He had no sporting hobbies. He drove a car. He had no life insurance. He sometimes gave presents on birthdays and such like. He didn't take holidays abroad although he had been about to go back to the Philippines where he had a girlfriend and brothers and sisters. She said she had no knowledge of his spending habits, but that she knew he sent money back to the Philippines by friends but she couldn't say how much. Sometimes $200/- or $250/- and the most was $500/-. She said he had no property or money in the Philippines or in Brunei.

At one stage, she appeared to say that the deceased bought a car in Brunei but this was con-

tradicted by the evidence of Mr. Maddox, her husband.

In paragraph 6 of the Agreed Evidence of Mr. Maddox, he said that his wife (the plaintiff) had forbidden him to make enquiries from her family in respect of the money remitted to the Philippines.

This must reflect badly on the plaintiff's case. The burden is on the plaintiff to establish the facts from which inferences are to be drawn. If she is withholding information on this point, one can only assume that it does not reflect favourably on the calculations.

There is thus very little evidence as to what the deceased's actual living expenses were.

In my view, this case can be distinguished from the case of *Ang Bee Tee* where the deceased was an elderly man.

This is a case concerning a young man of nearly 28 years. There also appears to have been a withholding of information relevant to the calculations.

In *Adsett* v. *West*, the deceased was a single man of 26 when he was killed in a motor accident as a result of the admitted negligence of the defendant. The deceased was the only son of the plaintiff, who was a successful businessman. The plaintiff brought an action under section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934, claiming, amongst other things, damages (i) for the loss of the deceased's anticipated earnings during the lost years. The plaintiff contended that in assessing the amount of damages to be awarded, the deceased was to be treated as a married man, since he had had a close relationship with a girl whom he was likely to marry in the near future. It was held:

"(1) It was well established that in a claim under the 1934 Act the deceased's estate was entitled to damages on account of his anticipated earnings in the lost years, but that loss was not to be awarded in full since the cost of the deceased's own living expenses and pleasures were to be deducted from his earnings before arriving at a surplus as a basis for the calculation of damages. Furthermore, where the court was considering a claim for the lost years in respect of a single man (particularly if he was without dependants), the surplus would be very much smaller than that of a married man since, without a wife or children to provide for, most of a single man's income would be devoted to his own maintenance and enjoyment and all that would remain would be that which he either would have saved or would have spent on or given to others.

(2) The surplus was to be calculated on the assumption that the deceased would have remained single during the lost years, except in so far as there were compelling reasons to do otherwise. While each case depended on its own facts, it was to be borne in mind that a single man's surplus was generally treated as a low percentage of lost income. Any increase to take account of the likelihood that the deceased would have married would be very modest, having regard to the fact that to predict the financial circumstances of the deceased in the event of his marriage would involve a high degree of speculation.

(3) .....

(4) .....

(5) On the assumption that the deceased was to be regarded as a single man throughout the lost years the appropriate surplus during that period was 15%. However, in all the circumstances it was proper to increase the surplus to 25% to take account of the likelihood that the deceased would have married. That would have resulted in a total award for loss of surplus in the lost years of £31,800....."

White's case was considered in *Adsett's* case.

In the Court of Appeal case of *Harris* v. *Empress Motors*, O'Connor L.J. had some remarks to make on the question of assessing the personal expenses in the case of young men.

He said at page 226:

". . . . In *Gammell's* case the deceased was a 15 year-old gipsy . . . . . The young man was single, living at home, doing a bit of fruit picking and such-like jobs, and earning some £20 a week. Mr. Hytner Q.C., who tried the case, came to the conclusion that after deducting living expenses the young man on an average might be expected to have over some £8 per week. This figure gave him a multiplicand; he applied a multiplier of 16 and the damages came out at £6,656.....

In the other case, *Furness* v. *B. & S. Massey Ltd.* [1982] A.C. 27, the deceased was 22 years old, single and living at home..... The case was tried by Tudor Evans J. who on the evidence before him found that the deceased was earning about £4,000 a year and he concluded that his living expenses would amount to two-thirds of his net income while living at home, but that in a few years he would move out from his home and then his living expenses would account for three-quarters of his net income. On a 16-years purchase he applied the one-third multiplicand for 5 years and the one-quarter multiplicand for 11 years and assessed the Law Reform damages at £17,273."

Later, in the same judgment, at page 227, he said:

"The Court of Appeal in *Gammell* and the House of Lords in both cases could find no error of principle in the trial judges' approaches to the problem, though they regarded the awards as very high."

Later, at page 229 "H", he commented on *White's* case in this way:

"This leaves the 'available surplus' solution propounded by Webster J. in *White* v. *London Transport Executive* [1982] Q.B. 489. In that case the deceased was a single man aged 25 living with his mother. He was killed in the course of his employment in December 1976, and the trial was in July 1981. It was agreed that for 4½ years to the date of trial net earnings lost were £21,800 and that the continuing loss was at the rate of £6,000 per annum. Webster J. said, at p. 499:

'It seems to me that the thing, the loss of which has to be measured, is the amenity of earning more than is needed to live a reasonably satisfying and potentially enjoyable life, taking into account in each case the particular circumstances of life of the particular deceased person. Thus, for example, in this day and age the ordinary working man's life would not be regarded by him as reasonably satisfactory and potentially enjoyable if he could not afford a short holiday, a modest amount of entertainment and social activity and, depending on his particular circumstances, a car. And it seems to me, therefore, that the amenity which he is deemed to have lost is the difference between what would be the cost of maintaining himself and providing those facilities and his prospective net earnings; and in the cost of maintaining himself I include the cost of his housing, heating, food, clothing, necessary travelling and insurances and things of that kind, if relevant.'

'Although it seems to me in some ways artificial to do so, for reasons I have already given it appears that he is to be treated for this purpose as an eternally single man, on the principle, I suppose, that the money he in fact spends on his family, if he has one, or if it is likely that he will have one, is money which would be available, after making provision for all the matters I have referred to, to be spent in other ways if he so desired; that is to say, if he were to prefer to spend it in other ways rather than to have a family. If he is to be treated in this way, it must follow that, although the House of Lords, as I have mentioned, said that the award of damages should be moderate, his notional surplus must be large enough to cover at least a not insubstantial part of the cost of maintaining a family, for although in the case of a man in the deceased's circumstances it can be regarded as probable in normal circumstances that his wife, if he were to marry, would do some paid work from time to time, it cannot be supposed that she alone would pay for the housing and maintenance of the children.'

Later in his judgment Webster J. said, at p. 500:

'If I am to make an award which covers the whole period I must, therefore, do so in some other way, and in particular in some way which involves the drawing and application of reasonable inferences, including inferences as to what would be likely or most likely to have happened to the deceased if any of the relevant circumstances existing at his death were unlikely to remain constant. The first inference which needs to be drawn, as it seems to me, if my definition of the loss in question is correct, is whether, and, if so, broadly to what extent, the deceased's prospective earnings matched the circumstances into which he had been born and was living. Because if a man born and brought up in very comfortable circumstances is a relatively low earner his earnings might not even be sufficient to meet his reasonable needs, let alone to exceed them: while, on the other hand, a man with relatively modest demands, earning relatively a lot of money compared with that earned by most men in his circumstances, would be likely to have a large surplus. Applying that test first therefore to the present case, I find on the available evidence that the deceased's earnings were reasonably appropriate for a man in his circumstances, giving him neither more nor less than an average surplus expressed as a percentage of his net earnings.'

The judge then inferred that the available surplus would be one-third of the net income for five years until he left home and one-quarter for the remaining ten years' purchase, much as Tudor Evans J. had done in the *Furness* case. Save that I do not agree that the deceased is to be treated as an eternally single man and bearing in mind what I have said about joint expenditure and that the resulting awards were thought in *Gammell* v. *Wilson* [1982] A.C. 27 to be very high, this seems to me an acceptable way of arriving at the deduction to be made in cases of young persons. The reason for supporting this high rate of deduction in cases such as *White* v. *London Transport Executive* [1982] Q.B. 489, *Gammell* and *Furness*, is that the future is speculative and allowance has to be made for the fact that a man may never marry, may never save a farthing, may never support anybody;"

The other two judges in the Court of Appeal, Goff L.J. and Stephenson L.J., both agreed with the judgment of O'Connor L.J.

Taking into consideration the dictum of O'Connor L.J. in the Court of Appeal in England and the lack of evidence in the present case and the fact that vital information which could have been produced has not, I consider that the personal expenses of the deceased should be fixed at 75%.

That being so, the plaintiff is entitled to 25% of the earnings as calculated.

That gives figures as follows:

Pre-trial loss : $ 66,881.25 x 25% = $ 16,720.31

Post-trial loss :$510,090.00 x 25% = $127,522.50

There will, therefore, be judgment for the plaintiff in the total sum of –

$ 16,720.31	Pre-trial loss
$127,522.50	Post-trial loss
6,000.00	Loss of expectation of life
9,300.00	Funeral expenses
$159,543.00	(rounded up to nearest dollar)

and costs to be taxed by the Registrar unless otherwise agreed.

I will hear the parties on the question of interest.

Order accordingly.

Solicitors: *Choo Chan & Wong ; David Clidero & Co.*